U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

PUBLIC COPY

FILE: [redacted] Office: Vermont Service Center Date: JAN 21 2000

EAC 98 080 51444

IN RE: Petitioner: [redacted]
Beneficiary:
nee [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition on September 23, 1998 after determining that the petitioner failed to submit additional evidence as had been requested. On January 8, 1998, the petitioner, through former counsel, filed a motion to reopen the petition on the basis that the request for additional information had been provided during the allotted period. After a complete review of the record of proceeding, including the motion, on March 23, 1999 the director granted the request to reopen the proceedings pursuant to 8 C.F.R. 103.5. He again denied the petition after determining that the petitioner failed to overcome the grounds of his original denial by failing to establish that she is a person whose deportation (removal) would result in extreme hardship to herself or to her child.

On appeal, counsel argues that evidence of extreme hardship was not submitted due to ineffective assistance of the petitioner's former counsel. Counsel submits a brief and additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during

> the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character;
>
> (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States on July 1, 1994. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on March 22, 1997 at Cherokee County, South Carolina. On January 20, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his requests for additional evidence on February 10, 1998 and April 22, 1998. The discussion will not be repeated here. Because the record contained insufficient evidence to establish that the petitioner's removal to Mexico would be an extreme hardship, the director denied the petition.

To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Further, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 240A of the Act. See Palmer v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Mejia-Carillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981).

In an effort to establish that the petitioner's removal would be an extreme hardship, and to overcome the director's concern, counsel, on appeal, focused on the following factors:

1. The nature and extent of physical or psychological consequences of the abuse the petitioner or her child(ren) have endured.

2. Any serious illness which the petitioner or her child(ren) may have, and the ability to obtain satisfactory treatment in your home country.

Counsel submits a note from [redacted] claiming to be a chiropractor, indicating that chiropractic care regarding the petitioner focuses in stabilizing the vertebral column through the use of chiropractic adjustment, and that the petitioner is scheduled to come once a week in order to put forward the plan of care in an efficient and organized manner.

This note, however, is undated, and Mr. [redacted] neither listed his credentials nor provided documentary evidence of the treatment plan, the extent or seriousness of the petitioner's illness, whether her presence in the United States is vital to her medical needs, and whether her medical needs cannot be met in Mexico.

Counsel also submits a letter dated May 21, 1999 from [redacted], a licensed psychological associate, in which he states that his first meeting with the petitioner took place on July 3, 1998 at the request of her attorney for the purpose of assessing her emotional condition after her marriage to her citizen spouse and that he most recently re-interviewed her on May 19, 1999. [redacted] indicates, "[I]nteresting enough, she has more physical problems, such as irregular menstruation, back pain, more frequent head aches. It is not known to this examiner if those problems are in any way related to the emotional situation caused by her marital break up. However, all those physical problems are well known for being aggravated by emotional stress." [redacted] further indicates that the petitioner seems to be experiencing a major depressive episode of moderate proportions that is more than likely a reaction to the marital break up, and that the petitioner also needs some medical interventions for medical problems she is experiencing. Mr. [redacted]

further states that it is his opinion that the petitioner would be negatively affected by a return to Mexico primarily due to the lack of resources to help her with her physical and emotional needs.

It is noted that [redacted] neither listed his credentials nor indicated how he arrived at his conclusions. While counsel states that the petitioner is now undergoing regular psychological counseling with [redacted] he has provided no documentary evidence of the treatment plan, evidence that the petitioner is presently receiving treatment and care for her medical condition, the seriousness of the petitioner's health, whether her presence in the United States is vital to her medical and psychological needs, and that her medical and psychological needs cannot be met in Mexico. Further, the petitioner has not established that she would not be able to find employment upon her return to Mexico.

3. The existence of laws, social practice, or customs in the petitioner's home country which would penalize or ostracize her or her child(ren) for having been a victim of abuse, or for having taken steps to leave an abusive spouse or father, or for actions she may have taken to stop the abuse.

Counsel states that the petitioner respectfully argues that she would be ostracized in her community due to the strongly held and very false perception that she would be "damaged goods," and due to the cultural differences between the United States and her native Mexico surrounding the concept of "machismo." The petitioner further argues that domestic abuse and the resulting psychological consequences stemming therefrom is given far less attention in Mexico than in this country. She states she would suffer if returned to Mexico due to the lack of psychological and psychiatric counseling.

As previously indicated, the record does not establish that the petitioner cannot obtain the medicinal treatment or psychotherapy in Mexico or that such treatment is unavailable there. Neither the articles nor other documentary evidence furnished reflect that the petitioner would not be treated properly in her country due to economical condition and lack of medical facilities.

Further, while counsel furnished articles and reports on country conditions in Mexico, he has not explained nor established any specific relationship between the petitioner's return to Mexico and the manner in which these conditions would affect her, and that residing in a high crime area constitutes extreme hardship. Nor has the petitioner established how the articles on violence against women in Mexico apply directly to her situation, whether living in a country where violence exists or where spousal abuse is prominent will subject her to such violence, and whether she would be humiliated, ostracized, or stigmatized because of her failed marriage, that she would bring shame to her family, or that she

would be shunned to the level of extreme hardship as envisioned by Congress.

4. The petitioner's age and length of residence in the United States.

Counsel states that although the petitioner is only 28 years of age and has resided in the United States for 5 years, these facts should not be viewed by the director in a "vacuum." Counsel argues that despite the petitioner's relatively young age and short residence in this country, the domestic abuse that has occurred and the support group that has been established in this country, as well as the conditions that would be faced if removal to Mexico occur, underscore the importance of the petitioner being able to remain here.

As previously indicated, the petitioner has not established any specific relationship between the petitioner's return to Mexico and the manner in which the country conditions would affect her, and that the articles on violence against women in Mexico apply directly to her situation, and that living in a country where violence exists will subject her to such violence. Further, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). While counsel states that support group has been established in this country, it is not clear that the petitioner is a member of a support group. Nor is there evidence to establish that the petitioner is not able to receive support from family members residing in the Mexico. Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996).

5. The petitioner's ability to obtain employment in her home country which would allow her to support herself and her child(ren).

Counsel states that the petitioner relies on economic material previously submitted.

The loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

While material furnished by counsel shows that Mexico experiences poor economy, and that in 1993 the official unemployment rate for Mexican women was 3.1% compared with 2.1% for men, the petitioner

has failed to establish that she is not able to find employment if she were to return to Mexico. Nor is there evidence to indicate that the petitioner would be unable to pursue her occupation or comparable employment upon her return to her country. Further, the fact that economic opportunities for the petitioner are better in the United States than in her homeland does not establish extreme hardship. See Matter of Ige, supra.

6. Family members in the petitioner's home.

Counsel states that the petitioner's mother passed away in 1989 as a result of a car accident. He further states that the petitioner's father, who has been physically abusive towards the petitioner, her siblings, and her late mother in the past, is severely diabetic and, as a result, he is unable to work. Counsel indicates that the petitioner's father would not be able to afford the cost of his various medications if not for the petitioner's financial help. He added that the petitioner's brothers and sisters have families of their own and would be unable to either house or temporarily support the petitioner if she were to return to Mexico.

The record, however, contains no documentary evidence to corroborate the petitioner's claim that she would not be able to find employment or a place to stay if she were to return to Mexico, or that she is not able to receive support from family members residing there. As held in Matter of Ige, supra, the mere loss of a job and the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Furthermore, as provided in 8 C.F.R. 204.2(c)(1)(viii), hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's removal would cause extreme hardship.

7. The psychological impact of deportation on the petitioner or her child(ren).

Counsel asserts that the petitioner has made a prima facie case for the proposition that "deportation would result in extreme hardship."

The director, in his decision, noted that the petitioner has no children who would be affected by her removal. Nor is there evidence in the record that the petitioner has any immediate family members in the United States. Based on the factors as previously addressed above, the petitioner has not established that she would suffer psychologically if she were removed to Mexico.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.